Case and Comment.

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS.
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED.
LEGAL NEWS NOTES AND FACETIÆ.

VOL. 2. JANUARY, 1896. No. 8.

CASE AND COMMENT.

Monthly. Subscription, 50 cents per annum postpaid.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

Branch Offices: { New York, 177 Broadway.
Chicago, Rand McNally Bldg.
Boston, 10 Tremont Street.

Entered at postoffice at Rochester, N. Y., as second-class mail matter.

Stephen Johnson Field.

Of the notable men who have sat on the Bench of the Supreme Court of the United States none have had a more vigorous and striking career than Mr. Justice Field. He was born at Haddam, Connecticut, November 4th, 1816, but after he was three years old lived for ten years at Stockbridge, Massachusetts. He went to Asia Minor with his sister and her husband, Rev. Josiah Brewer, in 1829. They were the parents of Mr. Justice Brewer. He remained in Asia Minor two and one-half years, during which he learned to speak and write with ease the modern Greek language. On returning to America he entered Williams College in 1833, and in 1837, at the age of twenty-one, he graduated with the highest honors of his class. In the office of his brother, David Dudley Field, in New York, he studied law and afterwards practiced as his brother's partner for seven years. After traveling in Europe, in 1848 he sailed for California and on December 28, 1849, he landed in San Francisco. In January following he was chosen alcalde of Marysville. This was in the transition period of California's political history, during which the powers of an alcalde, both in civil and criminal matters, were very great. He performed the duties of this office until he could surrender them to officers chosen under the new constitution of the state.

In California's first state legislature Mr. Field was a member of the Assembly and of the Judiciary Committee. In framing the laws of the new state his work was of very great importance. The Codes of the New York Commission, which were largely the work of his brother, David Dudley Field, he took as the basis of the Civil and Criminal Practice Acts of California, but changed them in many particulars to suit the different conditions of the new state. He continued to practice law from 1851 to 1857, when he was elected judge of the Supreme Court, of which he became the Chief Justice in 1859. Such is a most meager outline of the life and work of Mr. Stephen J. Field before he ascended the Bench of the Supreme Court of the United States.

President Lincoln on March 10th, 1863, appointed Mr. Justice Field to his present position, and he took his seat on the 7th of the following December. For the whole period of his service on that Bench he has been regarded as a judge of extraordinary abilities. In more than half of the volumes of the Supreme Court Reports, namely, from volume 68 to volume 158 inclusive, his opinions are now to be found. No one familiar with those Reports will need to be told of the virility of these opinions. Always powerful, they are especially so when the majority of the court is against him. A mere list of the important cases in which these opinions appear would be longer than the limits of this entire article.

Chief Justice Marshall's record for length of service on the Bench of the Supreme Court, which was for thirty-four years, five months,

and five days, is still unsurpassed; but as Mr. Justice Field took his seat thirty-two years ago the 7th of last December he has but little more than two years longer to serve before he will break the record of the great Chief Justice.

The fact that Stephen J. Field came from the New England home of the Rev. David D. Field, D. D., out of which came also Cyrus W. Field, David Dudley Field, Henry M. Field, and their sister, the mother of Mr. Justice Brewer, remarkably exhibits the possibilities of the influence of a single family upon the material, intellectual, and moral interests of the nation when that family is endowed with extraordinary qualities.

In Re Venezuela.

Whether there is any established rule of international law which justifies interference by the United States in the Venezuela case, or not, is a question of comparatively small importance. It is of still less importance whether or not that action is within the scope of the Monroe Doctrine, since that doctrine is at most a mere declaration of policy or intention on the part of the United States, and not a part of the recognized law of nations. But international law is itself only a fragment. Its established rules do not yet constitute even a skeleton of the subject. In such a condition of things many questions arising between nations are disposed of by straining rules really inapplicable, or else by some compromise, or other removal of the cause of difficulty, which leaves the question unsettled. Nations have been cautious about planting themselves on a simple declaration of principle. And yet when a principle recognized as just among individuals is clearly applicable to international questions, a nation is justified in acting upon it.

A powerful man who sees a bully robbing a child or other weak person would not be a typical Englishman or a typical American, and would not deserve to be called a man if he did not interfere, provided he was conscious of ability to interfere with good prospect of success. Nor would he try to justify his interference on any ground of self-defense. The same rule of action is a correct one for nations, and is not in conflict with any established doctrine of international law. Moreover, it is a rule not infrequently acted upon. If England were in reality attempting to destroy or despoil the republic of the Boers, Germany would be justified before the world in taking up the cause of the imperiled little nation. So if England were in reality attempting to rob Venezuela of territory, the United States, irrespective of any element of self-protection in the matter, would be justified in saying that such an aggression would be met by the United States as an ally of the weaker nation. England would likewise be justified in interfering, and beyond any doubt would interfere, in case France should attempt the conquest of Belgium; and the lawfulness of such action would be none the less if it should happen to spring from regard for Belgium rather than jealousy of France.

The righteousness of English, French, and Russian aid to the oppressed Greeks in 1827 was not dependent on any excuse of self defense or self-interest. Even now, when the nations are attempting to protect the mere province of Armenia against outrage by her undisputed sovereign, their action is based on the claims of humanity without any pretense of any element of self-defense. Of course such interference in behalf of the oppressed is, in case of nations just as in case of individuals, a policy to be exercised only to a reasonable extent. Neither individuals nor nations should attempt the rôle of knight errant to interfere in all the disputes that may arise between others. But in an aggravated case of spoliation or bullying, the powerful may well assume to protect a weak neighbor. In case of individuals as well as in case of nations the propriety of such interference must of course depend on the ability to interfere successfully.

No assumption that England is endeavoring to wrong Venezuela is justified. Yet refusal to arbitrate causes multitudes of people to believe that Lord Salisbury prefers to trust to might rather than right. Such refusal to arbitrate was a stupendous blunder and worse. Yet, if England is found to be justly entitled to what she claims, the people of the United States will be abundantly satisfied. If it is shown, on the other hand, that England is claiming the territory wrongfully while refusing to arbitrate the dispute, our people will unquestionably stand with Venezuela in support of her rights, even to the terrible end of a war with a kindred nation. President Cleveland's message on the subject, although needlessly offensive in its tone and expressions, is nevertheless in substance the voice of the nation. The overwhelming tide of popular

Stephen J. Field

PORTRAIT SUPPLEMENT.—"CASE AND COMMENT."
THE LAWYERS CO-OPERATIVE PUBLISHING CO.,
ROCHESTER, N. Y.
NEW YORK: 177 BROADWAY. BOSTON: 10 TREMONT ST. CHICAGO: RAND-MCNALLY BLDG.

American feeling crystalizes, not in a desire for war nor in dislike for our mother country, nor yet in any spirit of adventure or hope of national gain, but in the maxim *suum cuique* and the determination to protect a weaker sister against any outrage, if such is attempted. It is a feeling which, if understood, will be thoroughly respected by the people of England. There is but little danger of war between these two nations, but it is to be hoped the possibility of it may bring about an agreement for arbitration of all disputes that may arise between them. To refuse arbitration of international difficulties and choose war instead is a crime too colossal for a Christian nation to permit, even if the pride and stubbornness of some officials must be sacrificed to prevent it. Surely neither nation desires war. The people of the United States, at least, desire neither humiliation nor triumph on either side. They have no wish to favor Venezuela at the expense of England. They ask only for a fair settlement between those nations. They have not the slightest desire to make even a suggestion in the matter unless John Bull offers to little Venezuela his own mighty fist as the sole arbitrator of the dispute. In such a case, which we hope is purely conjectural, the United States would undoubtedly interpose.

Liability of Fiduciaries for Compound Interest.

The question of the liability of executors, trustees, etc., for compound interest, is an important one, not only because of the state of transition from which the subject has but just emerged, but also because of the frequency of trust investments and holdings and the vast interests sometimes involved. But, notwithstanding its importance, it has received but slight consideration from law writers, the text-books having cursorily treated isolated portions of it only, and the law periodicals having merely considered a small number of the leading and contradictory cases.

The charge is based upon the use of the trust fund by the executor or other trustee for his own benefit, and but little more than a century ago such use by the trustee in his trade or business was a matter of course, and a charge of interest therefor was unheard of. This practice, however, could hardly be deemed conducive to care and fidelity on the part of the trustee, and after much conflict of judicial opinion it gave way to the equitable rule that the trustee should not be permitted to profit from his position beyond his compensation for the proper execution of his trust, and that all the gains should be secured to the beneficiary by the imposition in a proper case of a charge of compound interest. This is shown in detail in a note in 29 L. R. A. 622, appended to the case of *Re* Ricker, 14 Mont. 153, in which the numerous cases on the subject, both English and American, have been collected.

But the allowance of compound interest does not follow the delinquency of the trustee as a matter of course. It is based on misconduct or gross delinquency as distinguished from mere negligence; and a mere neglect to invest, or an improper investment, or neglect in winding up and paying over, is not sufficient to warrant the charge unless more than simple interest was made. But the use of the trust fund and its admixture with the funds of the trustee, coupled with a failure or refusal to account, are usually regarded as sufficient, a presumption that compound interest was earned arising from use and failure to account. And unnecessarily calling in the trust fund, or nonperformance of a trust for accumulation, or neglect or violation of a duty imposed by statute, is a sufficient ground, at least where compound interest would have been made if the trust had been properly performed.

As to the rate charged, a slight divergence appears between the English and American rules. In England different rates of interest have been adopted, corresponding to the different degrees of negligence or misconduct, forming a regular established scale; while in America different rates of interest, either simple or compound, are charged according to the facts and circumstances of each case. But in each the leading principle seems to be to charge such a rate and with such rests as to approximate as nearly as possible to the actual or presumed profits of the fund, or what it would have produced if properly managed.

The question of the effect of the allowance of compound interest against a trustee on his right of compensation and upon the right to costs has also given rise to many decisions, and seems to remain somewhat unsettled, but it would appear at least that compensation will not be denied except in cases in which the delinquency of the trustee amounts to a total failure in the performance of his duty, and that costs will only be charged against him as to such proceedings as are made necessary by his breach of trust.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 29, Parts 4 and 5.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Explosions.

An explosion of nitro-glycerine in process of manufacture into dynamite is held in Judson *v.* Giant Powder Co. 107 Cal. 549, 29 L. R. A. 718, to raise a presumption of neg-

ligence, unless explained, and the risk of explosions is held not to be assumed by conveying land for use as a dynamite factory near the grantor's place of business, and continuing his business after one explosion has occurred.

Navigation.

Obstructing navigation to the damage of one who owns a boat used in part for the business of a common carrier is held in Farmers' Co-Operative Mfg. Co. *v.* Albemarle & C. R. Co. (N. C.) 29 L. R. A. 700, to give the owner a right of action for damages, even if he is not the sole or even a peculiar sufferer from the obstruction.

A state statute requiring all vessels using wood for fuel to be provided with suitable fire screens when navigating the waters of the state is sustained in Burrows *v.* Delta Transportation Co. (Mich.) 29 L. R. A. 468, against various objections, one of which is that it constitutes a regulation of interstate commerce.

Horse Races.

Persons giving a public exhibition of horse racing to which the public are invited are held, in Hart *v.* Washington Park Club, 157 Ill. 9, 29 L. R. A. 492, to be charged with the duty of keeping the grounds in a reasonably safe and suitable condition for spectators, but negligence on their part is not presumed from the mere fact that a person within the place reserved for spectators is injured by a runaway horse.

A state agricultural society is denied exemption from liability to persons injured by its negligence, in Lane *v.* Minnesota State Agr. Soc. (Minn.) 29 L. R. A. 708, in which it was held that permitting a horse, known to be dangerous and unsafe because of a vicious habit of track bolting, to run in a race, would create a liability to a woman riding another horse in the same race, if injured by the bolting of the vicious horse, when she did not know, but the officers did know, of the vicious habit.

Licenses.

An ordinance imposing a license on hawkers and peddlers is held in South Bend *v.* Martin (Ind.) 29 L. R. A. 531, not to interfere with interstate commerce in case of a peddler of chairs brought into the state before he was employed, even though the sale by him is conditional and the title remains in the foreign owner.

A license tax imposed on street cars and enforced by penalty is sustained in Denver City R. Co. *v.* Denver (Colo.) 29 L. R. A. 608, in which such taxes are held not to come within the constitutional requirement of uniformity.

An ordinance applying to all transient merchants, requiring them to pay a license fee, is held in Ottumwa *v.* Zekind (Iowa) 29 L. R. A. 734, to be free from objection on the ground that it was class legislation, or that it discriminated against nonresidents, merely because there were no resident merchants compelled to pay a license, but $25 per day or $250 per month is held an unreasonable, excessive, and invalid amount, constituting a tax rather than a license fee.

Taxes.

That a street railroad is a railroad within the meaning of the Florida statute taxing railroads is decided in Bloxham *v.* Consumers' Electric L. & St. R. Co. (Fla.) 29 L. R. A. 507, although the case recognizes that statutes about railroads are frequently inapplicable to street railways.

The power of a town to exempt property from taxation is denied in McTwiggan *v.* Hunter (R. I.) 29 L. R. A. 526, in the absence of constitutional legislative authority to grant the exemption.

A school organized to instruct the children of the rich at reasonable rates and the poor gratuitously is held in Philadelphia *v.* Overseers of Public Schools, 170 Pa. 257, 29 L. R. A. 600, not to constitute a charity exempt from taxation, when the institution is leased to a master as a business enterprise in consideration of one eighth of the gross receipts.

Religious Societies.

The constitutional law of the Evangelical Association of North America is discussed at length in Krecker *v.* Shirey, 163 Pa. 534, 29 L. R. A. 476, which, among other things, decides that the duty to fix the time and place for the general conference is administrative and may be delegated when the laws provide for holding them at regular intervals and name the bodies which shall fix the day and place; also that minority members of an annual con-

ference cannot take any action which will bind the majority, even if subsequently ratified by the highest tribunal of the denomination, although the action is taken after a majority of the members have revolted. So it is held that the appointment of a preacher by a conference in the absence of a quorum is inoperative.

Municipal Corporations.

The fact that the mayor of a city is also the president and a stockholder of a gas company is held in Capital Gas Co. *v.* Young (Cal.) 29 L. R. A. 463, not to defeat the right of the gas company to collect for gas furnished, not under any contract, but by requirement of law, although the statutes make it unlawful for any city officer to be interested in any contract or business for which payment is to be made from the city treasury.

The right to make municipal bonds payable in gold coin of the United States of the present standard of weight and fineness is denied in Skinner *v.* Santa Rosa (Cal.) 29 L. R. A. 512, because of a statute which provided that such bonds should be payable "in gold coin or lawful money of the United States."

Officers.

A certificate of qualification obtained after election but before the term of office is held in Kirkpatrick *v.* Brownfield (Ky.) 29 L. R. A. 703, to be sufficient for qualification in this respect under constitutional provisions requiring such a certificate to make a person "eligible to the office."

Health.

Prohibiting any pigpen to be built or maintained within 100 feet of any street or inhabited house is held in State *v.* Speyer, 67 Vt. 502, 29 L. R. A. 573, to be in excess of the powers of the state board of health, since it is not regarded as a reasonable and legitimate exercise of the power to protect health.

Dramshop Act.

The lien of a judgment for damages caused by the sale of intoxicating liquors under the Illinois dramshop act is held in Bell *v.* Cassem, 158 Ill. 45, 29 L. R. A. 571, to be inferior to a pre-existing mortgage on the premises.

Voters and Elections.

A statute making official ballots compulsory in elections of city officers, but optional in elections of town officers, is sustained in Cole *v.* Tucker (Mass.) 29 L. R. A. 668, against the objection that it is partial and unequal, as well as the more general objection that it is an unreasonable interference with the rights of voters.

The failure of election officers to affix an official stamp upon ballots at the proper time, or to place their initials upon them, is held in Moyer *v.* Van de Vanter (Wash.) 29 L. R. A. 670, to be insufficient to defeat the counting of such ballots where the constitution gives the electors the right "to vote at all elections."

What constitutes distinguishing marks which will make ballots void under the California statute is considered in Tebbe *v.* Smith (Cal.) 29 L. R. A. 673, holding that a cross in the marginal space at the right of the name of a candidate and outside of the square is not such a mark, although a single initial in the space left for inserting the name of a candidate is such a mark. So it is held that numerous ballots having in the same writing the name of a person and party will be rejected where but one person in the precinct was lawfully assisted in marking his ballot.

A slightly blurred spot or erasure on a ballot as held in Dennis *v.* Caughlin (Nev.) 29 L. R. A. 731, not to be a distinguishing mark where it does not indicate an intention to identify the ballot, and the same is held respecting a slight pencilmark made by mistake, or a tobacco stain, but it is held otherwise respecting a blurred spot or cross or other mark, different from that specified by the statute, which might have been made for identification.

Schools.

The occupancy of a part of the schoolhouse as a residence, by a teacher under a contract to teach, is held in Alpine Township School Dist. *v.* Batsche (Mich.) 29 L. R. A. 576, not to make him a tenant of the school district, but while holding over without right he becomes a tenant at sufferance.

Cotenancy.

The right of a coparcener to contribution for improvements is affirmed in Ward *v.* Ward (W. Va.) 29 L. R. A. 449, if they were made

by request of or agreement with the other coparceners, and it is also held that cotenants who refuse to assist in making necessary repairs may be compelled to contribute to the expense.

Boundaries.

The low-water mark, which in Vermont defines the limit of private ownership of land abutting upon a navigable lake, is held in McBurney *v.* Young, 67 Vt. 574, 29 L. R. A. 539, to be the ordinary low-water mark, and not the point to which water recedes in exceptionally dry seasons.

Easements.

A very unusual case respecting easements is that of Whittenton Mfg. Co. *v.* Staples (Mass.) 29 L. R. A. 500, which holds that premises may be charged with a servitude for contribution to the expense of the repairs to a dam, by reason of long-continued contributions thereto, claimed as a right and paid as a duty.

An implied right to the light which a building will receive from adjoining premises is denied in Robinson *v.* Clapp, 65 Conn. 365, 29 L. R. A. 582, where the building is erected on land which was purchased from the owner of such adjoining premises, at least when the remaining land has been sold to a subsequent purchaser for value.

Descent.

Brothers and sisters of the half blood are held in Anderson *v.* Bell (Ind.) 29 L. R. A. 541, to be included in a statutory provision for descent to brothers and sisters, unless a contrary intent appears.

Husband and Wife.

After divorce granted to the husband on account of the wife's fault and the assignment of minor children to her custody without any order respecting their maintenance, she is held, in Fulton *v.* Fulton (Ohio) 29 L. R. A. 678, to be without remedy to compel her former husband, their father, to pay her for their support.

Partnership.

One member of a law firm is held in Davis *v.* Dodson (Ga.) 29 L. R. A. 496, to have no power to bind his copartner by an agreement in his own private transaction that the firm will collect a chose in action free of charge. It is therefore held that when, in pursuance of his agreement, he makes such collection but fails to account for the proceeds to the owner, the property of the innocent partner is not subject to attachment on a claim for such misappropriation.

Giving firm paper for individual debts of partners for money contributed by them individually to the firm capital is sustained in *Re* Assigned Estate of Edwards and Wigginton, 122 Mo. 426, 29 L. R. A. 681, even if the firm was at the time insolvent or was made so by giving such notes.

Tradename.

The use of the words "U. S. Dental Rooms" and of the letters "U. S." upon the windows of a dental office, although they cannot be exclusively appropriated as a trademark, is held in Cady *v.* Schultz (R. I.) 29 L. R. A. 524, ground for an injunction in favor of one who had adopted them as a tradename, where the defendant was plainly attempting to convey the idea that he was carrying on a branch of the former's business, and thus profiting from his advertising and business reputation.

Estoppel.

The owner of a wagon who permits the name and occupation of another person, who is in possession of it, to be painted thereon for the purpose of inducing the public to believe that it belongs to and is used by the latter in his business, is in O'Connor *v.* Clark (Pa.) 29 L. R. A. 607, denied the right to assert his ownership as against an innocent purchaser from such other person.

Insurance.

Forfeiture of a policy of insurance as to a building by reason of lack of title to the premises is held in Bills *v.* Hibernian Ins. Co. 87 Tex. 547, 29 L. R. A. 706, to leave the policy valid as to personal property in the building, where the condition was that the entire policy should be void if the "subject of insurance be a building on ground not owned by the insured," since the building is not alone the subject of insurance.

The failure of an insurance company of another state to comply with statutory prerequi-

sites to the right to do business is held in State Mut. F. Ins. Co. *v.* Brinkley Stave & H. Co. (Ark.) 29 L. R. A. 712, not to prevent the company from enforcing claims for premiums, although the corporation was guilty of a misdemeanor and subject to a penalty by reason of the business. A majority of the decisions on this question as shown in a note in 24 L. R. A. 315, do not agree with this decision.

Street Railways.

Laying a street-railway track in a street where it crosses a railroad track is held lawful in Chicago, B. & O. R. Co. *v.* West Chicago Street R. Co. (Ill.) 29 L. R. A. 485, without any compensation to the railroad company, since the street railway imposes no additional servitude on the highway and is only one mode of exercising the public easement therein which the railroad company was subject to at the place of crossing.

Railroads.

A person driving along a road nearly parallel to a railroad track is held in Reynolds *v.* Great Northern R. Co. 29 L. R. A. 695, to be guilty of negligence where he was so muffled up for protection against the cold that he did not hear a train coming behind him, and was driving with such loose reins that he could not prevent the horse from drawing him against the train as it passed. He was also held to be without any right to rely on the duty to give warning of the approach of the train at a crossing which he had not used and did not intend to use, although he expected it to be given.

Carriers.

An illegal arrest of a passenger caused by a conductor of the train on which he was riding, while acting in the line of his employment, is held in Atchison, T. & S. F. R. Co. *v.* Henry (Kan.) 29 L. R. A. 465, to render the railroad company liable for false imprisonment.

A sleeping car company, whose employees are shown to have stolen money and other articles which a passenger might appropriately carry in the car, is held in Pullman's Palace Car Co. *v.* Martin, 29 L. R. A. 498, to be liable for the loss of such property.

The use of indecent or profane language in a street car, which a statute makes a breach of the peace subject to fine or imprisonment, is held in Robinson *v.* Rockland, T. & C. St. R. Co. 87 Me. 387, 29 L. R. A. 530, to justify the conductor in putting the offender off the car.

The liability of a railroad company for injuries received by a passenger from a blow by an employee is denied in Goodloe *v.* Memphis & C. R. Co. (Ala.) 29 L. R. A. 729, when the blow was given in a playful attempt to strike another employee. This decision is based on the ground that the act is not within the line of employment. But the case seems inconsistent with others found in a note in 14 L. R. A. 737.

A carrier transporting lobsters such as by the state laws it is unlawful to catch or "possess for any purpose" is held in State *v.* Swett (Me.) 29 L. R. A. 714, not to be liable for receiving them when it did not know or have reason to know that the lobsters, which were in barrels, were within the statute.

An action on the case against a carrier for negligent injury to goods which were sold and shipped subject to the payment of a draft against the bill of lading with a guaranty of the payment of freight by the shipper, is upheld in his favor in Spence *v.* Norfolk & W. R. Co. (Va.) 29 L. R. A. 578, although when notified of the injury he refused to direct the disposition of the goods on the ground that they no longer belonged to him, where the carrier had not acted to his prejudice on such claim.

Charities.

A trust for the encouragement of the sport of yacht racing, by a fund to provide for an annual cup, is held in *Re* Nottage (C. A.) (1895) 2 Ch. 649, to be unsustainable as a charitable gift.

Liens.

A lien for wages of mariners is held in The William M. Hoag (D. C. D. Or.) 69 Fed. Rep. 742, to be assignable after the services have been rendered and the right to the lien perfected, and such a lien is also upheld for services rendered to a receiver navigating a vessel under orders of court. In such a case a court of admiralty is not deprived of jurisdiction by the fact that the receiver was appointed by a different court, where the latter court has not provided for payment of the claims and the property is no longer in its custody.

The right to supplant a mortgage lien by a claim for materials, supplies, or labor, in case

of a receivership, is denied in Snively v. Loomis Coal Co. (C. C. E. D. Mo.) 69 Fed. Rep. 204, in case of a manufacturing and business corporation, since it is held that there is no public interest requiring such a corporation to be continued as a going concern.

Adoption of Child.

A distinction between adoption and legitimation, in case of the adoption of an adult natural son, is made in *Re* Province's Estate (Pa. D. C.) 4 Pa. Dist. Rep. 591, in which an act of assembly declaring that such a son is a lawful heir and adopted son of his father is of no effect as a legitimation, and therefore does not exempt from collateral-inheritance tax the estate which he receives from the father.

The Humorous Side.

A PENNSYLVANIA VENUS.—From Pennsylvania, where they still have *fi. fas.* and such like, and write "*Tarde Venit*" as the return on writs which come too late, a correspondent writes that a *testatum fieri facias* recently sent to an adjoining county came back with this return regularly signed by the sheriff: "Tarde Venus."

A CITY JUSTICE.—A state's attorney in South Dakota sends us some docket entries of a justice of the peace, who being located in a little incorporated town, in order to make his signatures more conspicuous and emphatic, signed himself as "city justice." A criminal prosecution by the State against Oscar Mowry was entitled on his docket "Oscar Mowry v. Oscar Mowry," and a finding in the case states that the said Oscar "plead guilty of the charge of assault of his own accord." In another case there is an entry of the issue of a warrant "for shooting in side of the town." The attorney says that he sends us these to "serve for modern forms further East."

THE PIG FAMILY IN COURT.—Hon. C. B. Moore, Ex-Attorney General of Arkansas, vouches for the truth of the following incident, which took place while he was present in the court-room at the Crawford County Circuit Court last November. A man named Driver was prosecuted for stealing hogs from a man named Pig. A witness named Shoat testified that the accused re-marked, that is, changed the marks on the hogs, and then mortgaged them to a man named Ham. This combination of names induced a member of the bar to hand up to Justice Evans, who was presiding, a slip of paper on which he had written something like this: "This is a remark able case; here is a (hog) driver accused of stealing pig's hogs. He ought to meat this allegation without difficulty since pig says his hogs were simply mortgaged to a ham, and this can only be proved by a shoat. This is not larceny; it is nothing but Bacon's abridgment."

GERMAN GENDER.—The following colloquy in court is quoted from the Law Notes, London: "Moses. (Interrupting the witness): He no speak truth. He is his wife—The judge: What!—Moses: His wife is Breitstein's son. (Laughter)—The judge: You mean he is Breitstein's son-in-law?—Moses: Dot is so."

This brings to mind a long-remembered threat of a German respecting an elopement, which was in these words: "If my vife runs avay mit anoder man's vife I vood shake him oud of her breeches, if she vos mine own fadder."

A JUDGE OF HORSE RACES.—In his opinion as to licenses for horse racing an Illinois judge, who evidently feels that one shouldn't know too much, ventures, nevertheless, to say "that a horse race is an exhibition, a performance, and an entertainment we may notice judicially without danger of impeachment."

"AN ANCIENT ORDER OF SMALL CRAFTSMEN."—Against a decision holding a barber liable for the loss of a customer's hat, the dissenting opinion of Chief Justice Bleckley, in a case lately published is, in full, as follows: "It hath never happened from the earliest times to the present, that barbers, who are an ancient order of small craftsmen, serving their customers for a small fee, and entertaining them the while with the small gossip of the town or village, have been held responsible for a mistake made by one customer whereby he taketh the hat of another from the common rack or hanging place appointed for all customers to hang their hats; this rack or place being in the same room in which customers sit to be shaved. The reason is that there is no complete bailment of the hat. The barber hath no exclusive custody thereof, and the fee for shaving is too small to compensate him for keeping a servant to watch it. He himself could not watch it, and at the same time shave the owner. Moreover, the value of an ordinary gentleman's hat is so

much, in proportion to the fee for shaving, that to make the barber an insurer against such mistakes of his customers would be unreasonable. The loss of one hat would absorb his earnings for a whole day, perhaps many days. The barber is a craftsman laboring for wages, not a capitalist conducting a business of trade or trust."

FRICASSEED METAPHORS.— The delicious eloquence of a native pleader in India, which appears below, is copied from the Law Notes (London):

"My learned friend, with mere wind from a teapot, thinks to browbeat me from my legs. But this is mere gorilla warfare. I stand under the shoes of my client, and only seek to place my bone of contention clearly in your honor's eye. My learned friend vainly runs amuck upon the sheet anchors of my case. Your honor will be pleased enough to observe that my client is a widow, a poor chap with one post-mortem son. A widow of this country, your honor will be pleased enough to observe, is not like a widow of your honor's country. A widow of this country is not able to eat more than one meal a day, or to wear clean clothes, or to look after a man. So my poor client had not such physic or mind as to be able to assault the lusty complainant. Yet she has been deprived of some of her more valuable leather, the leather of her nose. My learned friend has thrown only an argument ad hominy upon my teeth, that my client's witnesses are all her own relations. But they are not near relations. Their relationship is only homœopathic. So the misty arguments of my learned friend will not hold water. At least they will not hold good water. Then, my learned friend has said that there is on the side of his client a respectable witness, *viz.*, a pleader, and since this witness is independent so he should be believed. But your honor, with your honor's vast experience, is pleased enough to observe that truthfulness is not so plentiful as blackberries in this country. And I am sorry to say, though this witness is a man of my own feathers, that there are in my profession black sheep of every complexion, and some of them do not always speak gospel truth. Until the witness explains what has become of my client's nose leather he cannot be believed. He cannot be allowed to raise a castle in the air by beating upon a bush. So, trusting in that administration of British justice on which the sun never sits, I close my case."

New Books.

A new series of "New York Criminal Reports," edited by William H. Silvernail, begins with this month. Annotation is a feature of the series, with special attention to questions arising under the new Codes. They are published by W. C. Little & Co., Albany, New York. Price, per volume in parts, $5.00.

The tenth edition of Wharton's "Criminal Law," edited by William Draper Lewis, Ph. D., is now issued by Day & Bro., Philadelphia. 2 vols. $12.00. As new features this edition will include notes and references to erroneous charges and requests for the defense, which have been improperly refused.

The second edition of "Collateral and Direct Inheritance, Legacy, and Succession Taxes," by Benj. F. Dos Passos, is now published by the West Publishing Co., St. Paul, Minn. 1 vol. $6.00. The statutes of ten states on this subject are included in an appendix.

The third edition of Walker on "Patents," by Albert H. Walker, published by Baker, Voorhis & Co., New York, in one volume, price $6.50 net, or $6.75 delivered, is another book published within the last month. This edition is much changed and enlarged.

The fourth volume of the "American Electrical Cases," published by Matthew Bender, Albany, New York, is now ready. This volume brings the set down to April 1, 1894.

Miscellaneous.

The Kansas City Bar Monthly, an official paper of the Kansas City Bar Association, is the latest addition to the list of law journals. The numbers thus far published contain a variety of excellent and valuable articles.

The San Francisco Argonaut, in speaking of the romantic career of Robert Desty, and the change of his name to the simple form in which it appears on all his books, from that of "Robert d'Aillebout d'Estimauville de Beau Mouchel," says: "His family was noble, and in the days of Henry of Navarre their Chateau of Beau Mouchel was destroyed by fire, with all their family papers. The king signed documents attesting this fact, and Robert Desty had in his possession papers bearing the signature Henry 'IIII.' The king spelled his name with a 'y.'"

Book Notices.

GENERAL DIGEST of the Decisions of the Principal Courts in the United States, England and Canada. Refers to all reports, official and unofficial, first published during the year ending September, 1895, including the L. R. A., the I. S. Com. and the U. S. Sup. Court Reports, L. Ed. Annual, being volume X of the series. Published by The Lawyers' Co-Operative Publishing Company. Rochester. 1895.

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